a case-by-case basis by the SSC based on biomass and catch history and application of the MAFMC's risk policy found in § 648.21(a) through (d).

[76 FR 60615, Sept. 29, 2011]

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

The risk policy shall be used by the SSC in conjunction with the ABC control rules in § 648.20(a) through (d) to ensure the MAFMC's preferred tolerance for the risk of overfishing is addressed in the ABC development and recommendation process.

(a) *Stocks under a rebuilding plan.* The probability of not exceeding the F necessary to rebuild the stock within the specified time frame (rebuilding F or $F_{REBUILD}$) must be at least 50 percent, unless the default level is modified to a higher probability for not exceeding the rebuilding F through the formal stock rebuilding plan. A higher probability of not exceeding the rebuilding F would be expressed as a value greater than 50 percent (e.g., 75-percent probability of not exceeding rebuilding F, which corresponds to a 25-percent probability of exceeding rebuilding F).

(b) *Stocks not subject to a rebuilding plan.* (1) For stocks determined by the SSC to have an atypical life history, the maximum probability of overfishing as informed by the OFL distribution will be 35 percent for stocks with a ratio of biomass (B) to biomass at MSY (B_{MSY}) of 1.0 or higher (*i.e.*, the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 35 percent as the B/B_{MSY} ratio becomes less than 1.0 (*i.e.*, the stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. An atypical life history is generally defined as one that has greater vulnerability to exploitation and whose characteristics have not been fully addressed through the stock assessment and biological reference point development process.

(2) For stocks determined by the SSC to have a typical life history, the maximum probability of overfishing as informed by the OFL distribution will be 40 percent for stocks with a ratio of B to B_{MSY} of 1.0 or higher (*i.e.*, the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 40 percent as the B/B_{MSY} ratio becomes less 1.0 (stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. Stocks with typical life history are those not meeting the criteria in paragraph (b)(1) of this section.

(c) For instances in which the application of the risk policy approaches in either paragraph (b)(1) or (2) of this section using OFL distribution, as applicable given life history determination, results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

(d) *Stock without an OFL or OFL proxy.* (1) If an OFL cannot be determined from the stock assessment, or if a proxy is not provided by the SSC during the ABC recommendation process, ABC levels may not be increased until such time that an OFL has been identified.

(2) The SSC may deviate from paragraph (d)(1) of this section, provided that the following two criteria are met: Biomass-based reference points indicate that the stock is greater than B_{MSY} and stock biomass is stable or increasing, or if biomass based reference points are not available, best available science indicates that stock biomass is stable or increasing; and the SSC provides a determination that, based on best available science, the recommended increase to the ABC is not expected to result in overfishing. Any such deviation must include a description of why the increase is warranted, description of the methods used to derive the alternative ABC, and a certification that the ABC is not likely to result in overfishing on the stock.

[76 FR 60616, Sept. 29, 2011, as amended at 77 FR 51857, Aug. 27, 2012]

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall

meet annually to develop and recommend the following specifications for consideration by the Squid, Mackerel, and Butterfish Committee of the MAFMC:

(1) Initial OY (IOY), including Research Set-Aside (RSA), DAH, and DAP for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) ACL; ACT including RSA, DAH, DAP; bycatch level of the TALFF, if any; and butterfish mortality cap for the longfin squid fishery for butterfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) ACL; commercial ACT, including RSA, DAH, Tier 3 allocation (up to 7 percent of the DAH), DAP; JVP if any; TALFF, if any; and recreational ACT, including RSA for mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) IOY, including RSA, DAH, and DAP for longfin squid, which, subject to annual review, may be specified for a period of up to 3 years; and

(5) Inseason adjustment, upward or downward, to the specifications for longfin squid, as specified in paragraph (e) of this section.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review the best available data to recommend specifications consistent with the following:

(1) Longfin and/or *Illex squid.* (i) The ABC for any fishing year must be either the maximum OY, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY. The OYs specified during a fishing year may not exceed the following amounts:

(A) Longfin squid—The catch associated with a fishing mortality rate of $F_{Threshold}$.

(B) *Illex*—Catch associated with a fishing mortality rate of F_{MSY}.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of RSA and DAH. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH will be set after deduction for RSA, if applicable.

(2) *Mackerel*—(i) *ABC.* The MAFMC's SSC shall recommend a stock-wide ABC to the MAFMC, as described in § 648.20. The stock-wide mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the stock-wide ABC must be less than or equal to the OFL.

(ii) *ACL.* The ACL or Domestic ABC is calculated using the formula ACL/Domestic ABC = stock-wide ABC − C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year.

(iii) *OY.* OY may not exceed the ACL, and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors.

(iv) *ACT.* The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the specifications process.

(A) *Commercial sector ACT.* Commercial ACT is composed of RSA, DAH, Tier 3 allocation (up to 7 percent of DAH), dead discards, and TALFF, if any. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH, Tier 3 allocation (up to 7 of the DAH), DAP, and JVP will be set after deduction for RSA, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. Economic considerations for the establishment of JVP and TALFF include:

(*1*) Total world export potential of mackerel producing countries.

(*2*) Total world import demand of mackerel consuming countries.

(*3*) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(*4*) Increased/decreased revenues to the U.S. from foreign fees.

(*5*) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(*6*) Increased/decreased revenues to U.S. processors and exporters.

(*7*) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(*8*) Increases/decreases in U.S. processing productivity.

(*9*) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(B) *Recreational sector ACT.* Recreational ACT is composed of RSA, dead discards, and the Recreational Harvest Limit (RHL).

(v) *Performance review.* The Squid, Mackerel, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the mackerel ACL at least every 5 years.

(A) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any two consecutive years), the Squid, Mackerel, and Butterfish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(B) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(C) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

(vi) *River herring and shad catch cap.* The Monitoring Committee shall provide recommendations regarding a cap on the catch of river herring (alewife and blueback) and shad (American and hickory) in the Atlantic mackerel fishery based on best available scientific information, as well as measures (seasonal or regional quotas, closure thresholds) necessary for implementation.

(3) *Butterfish*—(i) *ABC.* The MAFMC's SSC shall recommend an ABC to the MAFMC, as described in §648.20. The butterfish ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the ABC must be less than or equal to the OFL.

(ii) *ACL.* The butterfish ACL will be set equal to the butterfish ABC.

(iii) *OY.* OY may not exceed the ACL, and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors.

(iv) *ACT.* The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend the butterfish ACT as part of the specifications process. The ACT is composed of RSA, DAH, dead discards, and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH and bycatch TALFF will be set after deduction for RSA, if applicable.

(v) The trip limit reduction thresholds for phase 2 and phase 3 of the butterfish three-phase management system will be modified annually through the specifications process. Trip limit reduction thresholds vary bi-monthly and are set to allow the butterfish fishery to continue to operate without exceeding the stock-wide ACL. An example of the phase 2 and 3 trip limit reduction thresholds is shown in the table below:

BUTTERFISH THRESHOLDS FOR REDUCING TRIP LIMITS FROM PHASE 1 TO PHASE 2

Months	Trip limit reduction threshold (percent)	Butterfish harvest (metric tons)
Jan–Feb	40	1,028
Mar–Apr	47	1,208
May–Jun	55	1,414
Jul–Aug	63	1,619

BUTTERFISH THRESHOLDS FOR REDUCING TRIP LIMITS FROM PHASE 1 TO PHASE 2—Continued

Months	Trip limit reduction threshold (percent)	Butterfish harvest (metric tons)
Sept–Oct	71	1,825
Nov–ec	78	2,005

(vi) The butterfish mortality cap will be based on a portion of the ACT (set annually during specifications) and the specified cap amount will be allocated to the longfin squid fishery as follows: Trimester I—43 percent; Trimester II—17 percent; and Trimester III—40 percent.

(vii) Any underages of the cap for Trimester I that are greater than 25 percent of the Trimester I cap will be reallocated to Trimester II and III (split equally between both trimesters) of the same year. The reallocation of the cap from Trimester I to Trimester II is limited, such that the Trimester II cap may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of the cap for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of the cap for Trimesters I and II will be subtracted from Trimester III of the same year.

(viii) *Performance review*. The Squid, Mackerel, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the butterfish ACL in conjunction with review for the mackerel fishery, as outlined in this section.

(4) *Additional measures*. The Monitoring Committee may also provide recommendations on the following items, if necessary:

(i) Observer provisions to maximize sampling at § 648.11(n)(2);

(ii) Exceptions for the requirement to pump/haul aboard all fish from net for inspection by at-sea observers in § 648.11(n)(3);

(c) *Recommended measures*. Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) RSA set from a range of 0 to 3 percent of:

(i) The IOY for longfin squid and/or *Illex*.

(ii) The commercial and/or recreational ACT for mackerel.

(iii) The ACT for butterfish.

(2) Commercial quotas, set after reductions for research quotas.

(3) The amount of longfin squid, *Illex*, and butterfish that may be retained and landed by vessels issued the incidental catch permit specified in § 648.4(1)(5)(ii), and the amount of mackerel that may be retained, possessed and landed by any of the limited access mackerel permits described at § 648.4(1)(5)(iii) and the incidental mackerel permit at § 648.4(1)(5)(iv).

(4) Commercial minimum fish sizes.

(5) Commercial trip limits.

(6) Commercial seasonal quotas/closures for longfin squid and *Illex*, and allocation for the Limited Access Mackerel Tier 3.

(7) Minimum mesh sizes.

(8) Commercial gear restrictions.

(9) Recreational allocation for mackerel.

(10) Recreational minimum fish size.

(11) Recreational possession limits.

(12) Recreational season.

(13) [Reserved]

(14) Modification of existing accountability measures (AMs) utilized by the Monitoring Committee.

(d) *Annual fishing measures*. (1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the ACL will not be exceeded. The

MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish a proposed rule in the FEDERAL REGISTER proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the FEDERAL REGISTER prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Regional Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications will not be exceeded. After the Regional Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Administrator, in consultation with the MAFMC, during the fishing year by publishing notification in the FEDERAL REGISTER.

(f) *Distribution of annual longfin squid commercial quota.* (1) A commercial quota for longfin squid will be allocated annually into trimester periods, based on the following percentages: Trimester I (January–April)—43.0 percent; Trimester II (May–August)—17.0 percent; and Trimester III (September–December)—40.0 percent.

(2) Any underages of commercial period quota for Trimester I that are greater than 25 percent of the Trimester I quota will be reallocated to Trimesters II and III of the same year. The reallocation of quota from Trimester I to Trimester II is limited, such that the Trimester II quota may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of commercial period quota for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

(g) *Research set-aside (RSA) quota.* Prior to the MAFMC's quota-setting meetings:

(1) NMFS will publish a Request for Proposals (RFP) in the FEDERAL REGISTER, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the MAFMC.

(2) NMFS will convene a review panel, including the MAFMC's Comprehensive Management Committee and technical experts, to review proposals submitted in response to the RFP.

(i) Each panel member will recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(ii) The NEFSC Director and the NOAA Grants Office will consider each panel member's recommendation, and provide final approval of the projects. The Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through

written notification to the project proponent.

(3) The grant awards approved under the RFPs will be for the upcoming fishing year. Proposals to fund research that would start prior to, or that would end after the fishing year, will not be eligible for consideration. All research and/or compensation trips must be completed within the fishing year for which the research grant was awarded.

(4) Research projects will be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator.

(5) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the FEDERAL REGISTER in compliance with the Administrative Procedure Act, provided:

(i) The reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified; and

(ii) Any reallocation of unallocated or unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP and allocated to the remaining quota periods for the fishing year proportionally.

(6) Vessels participating in approved research projects may be exempted from certain management measures by the Regional Administrator, provided that one of the following analyses of the impacts associated with the exemptions is provided:

(i) The analysis of the impacts of the requested exemptions is included as part of the annual quota specification packages submitted by the MAFMC; or

(ii) For proposals that require exemptions that extend beyond the scope of the analysis provided by the MAFMC, applicants may be required to provide additional analysis of impacts of the exemptions before issuance of an EFP will be considered, as specified in the EFP regulations at § 648.12(b).

[76 FR 60616, Sept. 29, 2011, as amended at 76 FR 68656, Nov. 7, 2011; 76 FR 81848, Dec. 29, 2011; 77 FR 16480, Mar. 21, 2012; 78 FR 3353, Jan. 16, 2013; 79 FR 10048, Feb. 24, 2014; 79 FR 18481, Apr. 2, 2014]

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

(a) *Mesh restrictions and exemptions.* Vessels subject to the mesh restrictions in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that specified in paragraphs (a)(1) and (a)(2) of this section.

(1) *Butterfish fishery.* Owners or operators of otter trawl vessels possessing 2,500 lb (1.13 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (7.62 cm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(2) *Longfin squid fishery.* Owners or operators of otter trawl vessels possessing longfin squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or, for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless their gear is stowed and not available for immediate use as defined in § 648.2.

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing longfin squid shall not use any device, gear, or